**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**DIVISION OF JUDGES**

**TRANSPORTATION SERVICES OF ST. JOHN, INC.**

**and** **Case 12–CA–202248**

**UNITED, INDUSTRIAL, SERVICE, TRANSPORTATION, PROFESSIONAL AND GOVERNMENT WORKERS OF NORTH AMERICA, OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT/NMU, AFL–CIO**

***Enrique González Quinoñes, Esq.***, Puerto Rico, for the General Counsel.
***Maria Tankenson Hodge, Esq.***, (Hodge & Hodge), United States Virgin Islands, for the Respondent.
***John J. Merchant, Esq.***, (Seafarers Union) United States Virgin Islands, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

ELIZABETH M. TAFE, Administrative Law Judge. This case was tried in Charlotte Amalie, St. Thomas, United States Virgin Islands on August 30, 2018. The United, Industrial, Service, Transportation, Professional and Government Workers of North America, of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL–CIO (Charging Party or Union) filed the charge on July 12, 2017,[1] which was amended on March 8, 2018. The General Counsel issued the complaint on April 27, 2018, (the complaint). The complaint alleges that Transportation Services of St. John, Inc., (Respondent) failed and refused to continue in effect the terms and conditions of its collective-bargaining agreement with the Union by refusing to arbitrate grievances, and has been failing and refusing to bargain in good faith with the Union within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act.

As discussed in detail below, I find merit to the complaint allegations.

[1] All dates are in 2017 unless otherwise indicated.

The parties were given a full opportunity to participate in the hearing, to introduce relevant evidence, to call, examine, and cross-examine witnesses, and to file briefs. On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the brief filed by the General Counsel,[3] I make the following findings, conclusions, and recommendations.

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation with a principal office and place of business in St. John, United States Virgin Islands, a Territory of the United States, (USVI) engages in the business of providing regular marine ferry passenger transportation services between the islands of St. Thomas, USVI and St. John, USVI, and occasional marine ferry passenger transportation services to the islands of St. Croix, USVI and the Commonwealth of Puerto Rico.[4] Annually in conducting its business, the Respondent derives gross revenues in excess of $250,000. Annually, the Respondent in conducting its business, purchases and receives goods valued in excess of $50,000 at its places of business in the USVI directly from points located outside the USVI, and from other enterprises located within the USVI, each of which receives the goods directly from points outside the USVI. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### *Factual Background*

The Respondent admits and I find that the following employees constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

> All crewmen employed by the Respondent at its place of business located in the United States Virgin Islands.

---

[2] Citations to the record are included to aid review and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant factors have been considered, including the interests and demeanor of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp*., 335 NLRB 622, 633 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003).

[3] Neither the Respondent nor the Union filed posthearing briefs in this matter.

[4] Although there was some discussion in the record relating to the Respondent's role as one of two contracted providers of public transportation on behalf of the government of the U.S. Virgin Islands, there is no dispute that the Respondent is a privately-owned company, subject to the Board's jurisdiction.

On May 1, 1998, the Board certified the Union as the exclusive representative of Respondent's employees for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.[5] At all material times since May 1, 1998, the Union has been the exclusive collective-bargaining representative of the unit described above.

The parties stipulated, and I find, that Loredon Boynes, the Respondent's president, and Kenrick Augustus, the Respondent's general manager, are supervisors within the meaning of Section 2(11) of the Act and agents within the meaning of Section 2(13) of the Act.

The Respondent and the Charging Party Union have been parties to a collective-bargaining agreement covering the terms and conditions of employment of the unit, which was originally in effect by its terms from September 1, 2006 through August 31, 2009 (the CBA). (Jt. Exh. 1.) Since August 31, 2009, the CBA has been extended and remains in effect by mutual agreement of the parties. The Respondent and the Charging Party describe their current extension of the terms of the CBA as a "day to day" extension, pursuant to which both parties reserve the right to discontinue the CBA upon one day's notice to the other party. The Respondent and the Charging Party are engaged in negotiations for a successor collective-bargaining agreement. The Respondent and the Charging Party admit, and all parties stipulate, that the CBA has been in full effect and valid during all times material to this matter, including from January 1, 2017 to the hearing date, August 30, 2018, and that at no time has either party terminated the extension of the CBA. (Jt. Exh. 24.)

The CBA contains the following grievance-arbitration provision (Jt. Exh. 1 at 8–10):

> Article XI: Grievance and Arbitration Procedures
>
> Section 1. Grievances are any disputes, complaints or controversies arising between the parties hereto related to, arising out of, or about or involving questions of an alleged violation, interpretation, application or performance of any Article or Articles of this Agreement.
>
> Section 2. If a grievance as herein defined should arise, an honest effort shall be made to settle such difficulties promptly in the manner outlined in the following steps:
>
> > Step 1. The matter will first be discussed between the aggrieved employee and employees, the employees' immediate supervisor and the Shop Steward, not later than two (2) working days after its occurrence. The Supervisor shall advise the employee and the Shop Steward, of his decision within two (2) working days after the discussion has taken place.

[5] The unit description in the 1998 certification of representative is slightly different from the one the parties have stipulated to in this record. (Compare GC Exh. 2 and Jt. Exh. 24 at 2.) The present unit description is expressly set forth in the CBA executed by the Respondent and Union in 2007, and which has remained in effect since then. (See Jt. Exh. 1 at 1 and Jt. Exh. 24 at 2–3).

> Step 2. If the grievance is not satisfactorily adjusted in step 1 above, the matter shall be reduced to writing and presented to the Company's top management within five (5) work days from the date the grievance arose. Top management shall meet with the Union official, the grievant, the Shop Steward and the Supervisor within two (2) work days after the presentation. Within five (5) work days after the meeting, top management shall advise the Union of their decision in writing.
>
> Step 3. If top management's decision is not satisfactory to the Union, within five (5) days after the receipt of that decision, the Union may present top management with a written demand for arbitration signed by a Union Official. **When a demand for arbitration is presented, either party shall have the right to request Federal Mediation and Conciliation Services (FMCS) to provide the parties with a panel of seven (7) impartial Federal arbitrators. Thereafter, each party shall strike three names and the person last appearing on the list shall be designated as the arbitrator and his appointment shall be binding on both parties.** (emphasis added)
>
> Section 4. The arbitrator shall set a date and the time for the hearing of the grievance and must notify the parties no less than ten (10) working days in advance of said hearing.
>
> Section 5. Any decision or award of an arbitrator rendered within the limitations of the above sections shall be final and binding on the Union, the employees, and the Company and enforceable in any court of competent jurisdiction.
>
> Section 6. Only the Employer and the Union shall have right to request arbitration.
>
> Section 7. **The fees and expenses of the arbitrator** (including the cost of a transcript where mutually agreed) **shall be equally divided between the Union and the Employer. Otherwise, each party shall pay its own expenses**. Employees called to the arbitration as witnesses will be excused by the Company without loss of pay in a manner which will duly disrupt the operations of the Company. (sic.) (emphasis added)

Union Vice President Eugene Irish testified that the above grievance-arbitration language has been unchanged since he began working for the Union in 1999. In practice, once a grievance is timely filed, the union representative and the Respondent's representative meet to discuss the grievance, and the Respondent must file a written response. If the Union is not satisfied, it can take the grievance to the next step and, ultimately, can demand arbitration. If the Union and the supervisor cannot meet at the first step, the parties go to the second step and meet with upper management, here, the General Manager, Augustus. If the grievance is not resolved at the second step, upper management presents a written response following the grievance meeting, and then the union representative presents a summary report to Irish for review and determination whether to demand arbitration. Irish consults with the Union's legal representative. Then, Irish

makes a final determination regarding whether to arbitrate the dispute, pursuant to the procedures in the CBA. Demanding arbitration involves notice to the Respondent and requesting a panel of seven arbitrators from the FMCS, and each side striking three from the list.

In the past 12 to 15 years, the Union and the Respondent have arbitrated only one grievance, although the Union has demanded arbitration in several cases that were resolved before arbitration. The arbitrated case concerned a discharge.[6] Ultimately, the arbitrator found for the Union in that grievance and awarded the grievant reinstatement and backpay. That arbitrator was from the mainland U.S. and the arbitration was held in person in the U.S. Virgin Islands. The parties have never chosen arbitrators in a manner different from that described in the CBA.

Grievance no. 049-16 (2-week suspension of Emanuel).

Pursuant to the grievance-arbitration provisions in the CBA, on December 27, 2016, Union Representative Kevin Challenger filed a grievance with General Manager Augustus on behalf of employee Alvis Emanuel (Grievance No. 049-16) regarding a 2-week suspension of Emanuel for alleged poor performance and/or insubordination. (Jt. Exh. 2; R. Exh. 2.)[7] The grievance seeks make whole relief for employee Emanuel, citing Article XVIII, Section 7 of the CBA, a provision requiring "just cause" for discipline. (Jt. Exh. 1 at 15.)[8] The same day, Challenger requested a copy of all evidence collected during the Respondent's investigation that led to the suspension. (Jt. Exh. 2.)

On January 5, Challenger met with Boynes, Augustus, and Emanuel to discuss the grievance. (Jt. Exh. 2.) The CBA requires a written response within 5 days of the grievance meeting with top management. The Respondent did not provide a written response to the January 5 grievance meeting until at least March 3. A letter dated March 3 was sent from Augustus on behalf of the Respondent to Challenger denying the grievance about Emanuel's suspension. The Union did not receive a prompt written response from the Respondent, despite Challenger's attempts to follow up with the Respondent by calling Augustus and leaving a message with his secretary. Challenger recalled that the secretary indicated that Augustus would call him back, although that did not happen. Believing a written response was past due to the Union pursuant to the CBA provisions, Challenger submitted a report to Irish, for him to consider how to proceed.

[6] The grievant in this earlier arbitration was also Alvis Emanuel, the employee on whose behalf the Union seeks arbitration in this case.

[7] The record suggests there is some dispute regarding the underlying reasons for the 2-week suspension. I find it unnecessary to make factual findings regarding any record evidence related to the merits of the underlying grievance in order to rule on the issues in this case.

[8] At times in the record, the Respondent suggests that the grievance refers to the wrong section of the CBA. (See Jt. Exh. 11 and GC Exh. 1(i).) The CBA appears to have a pagination error, an editing error, or perhaps unusual organization in Article XVIII. (Jt. Exh. 1 at 15.) The grievance, as written, refers to a section of the CBA that may be relevant to the issues. I find that it has not been shown to be frivolous or otherwise deficient on its face, and that the parties understood that the grievance addressed the appropriateness of the 2-week suspension pursuant to a "just cause" provision. (Jt. Exh. 11 at 3.) Whether the grievance is sufficiently precise and otherwise substantively meritorious is a question for an arbitrator. Except to find that, on its face, the grievance appears to raise an issue cognizable under the CBA, I do not reach this contractual interpretation question, which is not necessary to rule on the complaint allegations.

(GC Exh. 3.) Submitting a report to Irish was consistent with the Union's practice to have the union vice president consider whether to take a grievance to the third step, following a grievance meeting with upper management. After consulting legal counsel, Irish determined that the grievance should go forward on the merits, and he turned it over to the Union's legal counsel, John Merchant, to handle the arbitration. On February 16, Merchant sent a letter to Boynes, laying out the chronology of the grievance as he knew it, and demanding arbitration. (Jt. Exh. 3.) That same day, to begin the arbitration process, as outlined in the CBA, Merchant applied to the Federal Mediation and Conciliation Services (FMCS) for a list of seven arbitrators. (Jt. Exh. 4.) In response, on March 8, the FMCS sent a "panel" or list of seven arbitrators to both Merchant and Boynes, with some instructions regarding how to proceed.

Dispute about the selection of arbitrators.

Between March 10 and May 19, Merchant and Hodge exchanged correspondence through mail, fax, and electronic mail that addressed concerns regarding the status and procedure for the requested arbitration, and, specifically, regarding the parties' positions regarding the selection of arbitrators pursuant to the CBA. (Jt. Exhs. 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, and 19.) This correspondence is summarized below.

On March 10, by letter, Hodge asserted that the Respondent contested whether the grievance was "ripe" for arbitration, asserting that the grievance referred to the wrong section of the CBA, disputing the chronology of events leading to the filing, and stating that the Respondent did not believe it had "waived any rights" under the CBA. (Jt. Exh. 7.) On March 23, Merchant, by letter, cited "just cause" language in the section of the CBA cited in the grievance, and explained that a grievance meeting with President Boynes was held on January 5, in accord with the grievance procedure, and that, "to date," top management had failed to advise the Union in writing of its decision, despite the Union "following up." Merchant further suggested three options for going forward: 1) arbitrate the grievance as proposed; 2) rescind the discipline and suspension by stipulated agreement; or 3) litigate whether the company acted in good faith in observing the due process requirements of the CBA at the NLRB, and then arbitrate the suspension. (Jt. Exh. 8.)

On April 5, Merchant again wrote to Hodge, identifying that the Union had selected three of the seven arbitrators to eliminate from the panel provided by the FMCS, asking for the company's response regarding the remaining names, and offering to provide FMCS with the name of the last remaining arbitrator on the list. (Jt. Exh. 10.) Also on April 5, Hodge emailed Merchant stating she had written him recently, asking him to confirm the receipt of the prior correspondence as she was unsure whether the fax went through, and stating she would review his letter and "proceed as appropriate." (Jt. Exh. 11.)

Hodge attached a March 24 letter to her April 5 email, which appears to be responding to the Union's March 23 letter. It states that Hodge hopes that they will be able to resolve any misunderstanding by mutual agreement. It acknowledges that the CBA has been extended by mutual agreement and that negotiations are currently in progress toward a new agreement. It further states that the "just cause" language referenced by Merchant indeed exists in the CBA in the article cited in the grievance, but that the company believes that section is inapplicable because Emanuel's suspension did not involve "Sick Leave," which she interprets the section to

be about. She further states that the company does not dispute that the CBA does provided elsewhere that suspensions must be based on "just cause," citing, Article XXII, and confirms that the company "does not dispute that suspension without just cause is a legitimate basis for a grievance." (Jt. Exh. 11 at 3.) She contends that the Union did not comply with the procedural requirements of the contract in this grievance, without providing any additional specifics. She asserts that the company actually responded to the Union in writing on March 3, advising that it had denied the grievance and enclosing that letter, which is addressed to Challenger and signed by Augustus. (Jt. Exh 11 at 5.) She also states the following:

> We also wish to note our concern that moving this matter to federal arbitration as this point is a step that involves a costly dispute resolution mechanism, particularly for a small Virgin Islands company. The Company is not prepared to rescind the discipline or suspension, which it considers entirely proper. Therefore, if the union considers this a matter warranting federal arbitration, we will proceed with that process. We have not engaged in the process previously, and will have to seek guidance from that agency on the specifics of the process for remote participant.
>
> As an alternative, we ask that you consider a local mediation and a locale mediator, to limit costs. If you are willing to do so, we will await further word from you on that suggestion. If not, we will address further communications to the FMCS…. (Jt. Exh. 11 at 4.)

On April 6, by letter, Merchant responded by first asserting that the Respondent's April 6 letter enclosing a March 24 letter, which itself enclosed a March 3 letter, reflected a pattern of the Respondent's "resort to bad faith and evasive tactics," while the Union was being straight forward, and was "determined to have a full disposition of this grievance before a labor arbitrator." (Jt. Exh. 12.) He confirmed receipt on April 5 of the March 3 letter upholding management's decision to deny Emanuel's grievance. His letter repeats that the Union demands arbitration, even though he believes the Union's arbitration demand was already clear, recorded, and proper. It further states that Hodge's perceived deficiencies in the grievance "can best be decided by the arbitrator or the [B]oard." (Jt. Exh. 12.)

Also on April 6, Hodge requested the resumes of the seven arbitrators identified by FMCS. Hodge stated, "As you are not willing to use a local mediation service, we will proceed with the federal process…" but they needed the materials. (Jt. Exh. 13.) Merchant, by email, sent Hodge the materials shortly after receiving Hodge's request.

On the morning of April 7, Merchant and Hodge exchanged several emails. (Jt. Exh. 14.) Merchant told Hodge that, once she had selected from the remaining arbitrators, he would consult with Irish about her suggestion that they find a local arbitrator. He also cautioned about a perception that local arbitrators may be biased or there may be a perception of bias that may erode confidence in the process; he also noted selecting a local arbitrator might be a cumbersome and drawn out process. He further suggested that if they proceed with the FMCS, they should have a prehearing meeting to constructively discuss the matter and possible settlement. Hodge responded by asking what his position would be on conducting the arbitration hearing by Skype or other remote means to avoid paying an arbitrator's daily rate and travel expenses to the Virgin

Islands to avoid costs; she also asked if Merchant had experience with a hearing by remote technology. Merchant responded that he would discuss it with Irish, but that they did not have much experience with that; he suggested that it might be hard for an arbitrator to properly "read" witness testimony by video conference. Hodge agreed that a video conference would not be a "perfect equivalent" to an in-person hearing, but that she thought that "the cost considerations are a valid factor when the amount in controversy is not that large." (Jt. Exh. 14 at 1.) She expressed appreciation for his willingness to raise the issue with Irish, and stated that she would review the resumes of the remaining candidates, and would let him know as soon as that is done.

On April 11, by letter, Hodge responded to the April 6 letter, enclosing proof of service by fax of the March 3 letter to the Union on March 3 and a record of receipt of the fax. The letter suggests Merchant should apologize for his suggestion that the company acted in bad faith, and further states that Hodge hopes the Union is not acting in bad faith. Hodge also stated the following:

> We continue to review the list of proposed arbitrators, as we continue to await word on our very reasonable request that you agree that if this matter is to be subject to arbitration under the FMCS, that the parties agree this be done by [S]kype, videoconference or telephone … to control the excessive costs associated with dispute resolution in the territory for a modest amount in dispute. (Jt. Exh. 15)

On May 8, Merchant responded to Hodge by letter, stating that the Union did not agree to hold the hearing by Skype, videoconference, or other dial-in means, because the Union believed issues in this discipline case would require that the arbitrator observe the witness in person. Merchant notes that perhaps in a case that was merely a contract dispute, rather than a dispute raising the "just cause" for discipline provisions, the Union could consider resorting to such measures to limit costs. He stated that, "[t]he simplest way to cut costs, of course, would be to rescind the wrongful discipline and reinstate Mr. Emanuel any docked pay." (Jt. Exh. 17.) He further stated that although Augustus' March 30th (stet) letter failed to directly reach Challenger, it still was 90 days after the January 5 meeting. Merchant then asked Hodge to select an arbitrator and either notify the arbitrator of the appointment, or notify Merchant who would do so.

On May 16, Hodge responded:

> First, there is no reasonable justification for your refusal to consider a cost-savings means of conducting an arbitration in the U.S. Virgin Islands, with a stateside arbitrator where the cost of travel alone would dwarf the amount in controversy, so that the arbitrator may "consider the witnesses 'physical comportment.'" (Jt. Exh. 18.)

Hodge asserted that witnesses routinely testify in federal and superior court by video. She also renewed her request that the Union "consider that request in good faith, and without resort to veiled threat that the only way to avoid the punitive expense is for the employer to capitulate." (Jt. Exh. 18 at 1.) She further asserted that his comment about a March 30 letter was inaccurate, as there was no March 30 letter, only a March 3 letter, expressing skepticism that the Union did not receive it on March 3. Hodge reported that they were reviewing the prospect of a request to

FMCS on the issue of financially reasonable means of conducting the arbitration and would copy Merchant on that correspondence. In addition, Hodge's letter states:

> We also continue to review the available candidates, and note that we are informed there is at least one arbitrator resident in St. Thomas who has been accepted by the United Steelworkers for similar arbitrations, at a far more reasonable cost. Finally, we are conferring about involving a labor law specialist as it appears the Union is not prepared to be reasonable about the process of resolving this grievance, and may be attempting to take advantage of our positions as general practitioners with little background in labor law. (Jt. Exh. 18 at 2)

On May 19, Merchant responded by letter. (Jt. Exh. 19.) He first explained that although his prior reference to a March 30 letter was a mistaken reference to the March 3 letter, Augustus' March 3 "written decision" arrived 19 days after Merchant served the company with a demand for arbitration. He then rejected the suggestion that bringing the grievance involves a threat, explaining that the fact that the arbitration process carries a cost is not coercive or unfair, it was bargained for, and, in general, is a less costly dispute resolution process than lawsuits. He asserted that it is "patently unreasonable" for the Respondent to resist arbitrating on this rare occasion. Merchant offered to ask the arbitrator to hear a second grievance for which it had demanded arbitration at the same time, to attempt to limit costs. Merchant noted that the FMCS has provided another list of seven arbitrators related to that grievance, and he listed the three arbitrators the Union struck from the second list of arbitrators. Merchant also stated that the Respondent's desire to consult a labor specialist does not justify any more delay in the process. He advised that, once selected, the arbitrator can consider prehearing motions, including the Respondent's request for a meeting by videoconference, which the Union may oppose. He concluded, "[i]n short, please let us get on with it and choose an arbitrator." (Jt. Exh. 19.)

In early June, Hodge corresponded with Arthur Pearlstein, director of arbitration at FMCS, copying Merchant on the correspondence. Hodge explained the Respondent's concerns about costs of engaging a state-side arbitrator and requested a new panel of arbitrators from the U.S. Virgin Islands or Puerto Rico. She notes that "[c]learly, the expense of air travel and hotel accommodations associated with bringing one of the arbitrators on the current list of possible arbitrators to the territory would exceed the total amount in dispute." (Jt. Exh. 20 at 2.) Pearlstein explained that FMCS can only provide panels of arbitrators from their roster, and there are currently no arbitrators on their list from the Virgin Islands and only one from Puerto Rico. (Jt. Exh. 21.) He noted that the request for arbitrators was a "regional request" and the list was generated randomly from the states in her region. Pearlstein stated that, "[i]f your collective bargaining agreement provides for something different, please share the relevant part and I will be glad to review." (Jt. Exh. 21.) Hodge responded by asking Pearlstein why FMCS does not have any arbitrators from the Virgin Islands on its lists, as there are AAA certified arbitrators there. (Jt. Exh. 22.) Pearlstein responded that Hodge raised a good question, and explained that to be on the roster, arbitrators had to apply, which was free of charge. He offered that he would invite the arbitrators she knows to apply, if she forwards their contact information. (Jt. Exh. 23.)

The Respondent did not strike three arbitrators from the panel of seven arbitrators provided by FMCS, which would have resulted in the selection, by process of elimination, of an arbitrator pursuant to the procedure outlined in the CBA, Article XI.

Irish testified that he did not instruct union representatives or counsel to simply reject all of the Respondent's proposals to change the manner of selection of an arbitrator, which Hodge presented to the Union in attempts to avoid the perceived cost of arbitration, such as using a local mediator to hold the arbitration rather than the selection process in the CBA or holding the hearing by Skype to avoid travel costs of an arbitrator from the mainland. Irish considered the proposals and discussed them with counsel, and took the position that the CBA does not provide for those alternative methods of selecting arbitrators or holding an arbitration hearing, and that the changes to the arbitration provision in the CBA should be addressed in the parties' negotiations for a successor collective-bargaining agreement. In fact, the issue had been raised in collective-bargaining by Hodge as early as 2015, but the parties had yet to reach agreement on that issue or an overall agreement on a successor CBA. He further expressed his belief that he would not be serving his members correctly if he did not follow the terms of the CBA.

Respondent's President Boynes and General Manager Augustus testified regarding the Respondent's position about selection of an arbitrator in the grievance about Emanuel's 2-week suspension (Grievance No. 049-16). Boynes testified that, after the hurricane damage in Fall 2017 where it lost some vessels and the general economy was negatively affected, its business has faced financial challenges. Boynes testified that his financial situation is such that he cannot afford an expensive arbitration. Boynes stated that he was willing to arbitrate the 2-week suspension, if it could be done by a local arbitrator or by a remote proceeding. However, Boynes also testified that he had no knowledge about the potential cost of the arbitration; instead he relied on his attorney and general manger regarding cost analyses and figures.

Augustus testified that he did not tell the Union that the Respondent refused to arbitrate. In 2015, he spoke with Irish about trying to find a cheaper way to do arbitration, such as using Skype or a local arbitrator, and Irish said they needed to negotiate that. Nothing more came of that discussion, although it did come up in contract negotiations. Augustus stated that he believes that arbitration is supposed to be the least expensive way to resolve disputes, but believed that the selection process in the CBA was not reasonable if interpreted to require a state-side arbitrator. Augustus did not perform a cost analysis to determine how much the arbitration of the 2-week suspension would cost. His comptroller "looked at it" and a figure of $10,000 was identified, although Augustus was unaware of the basis of that figure. The need to arbitrate multiple grievances could have economic consequences in the future, although Augustus testified that he does not assume there will be multiple arbitrations in the future. He stated that he recognizes that there has been only one case taken to arbitration in 12–15 years, other than the present one. For business planning, Augustus believes that considering the cost of arbitration is appropriate, as saving money would allow the company to be more profitable. He does not believe that the grievance arbitration provision in the CBA is "viable" if it is interpreted to require state-side arbitrators.

Neither Boynes nor Augustus selected an arbitrator from the list provided to them by the FMCS. They never evaluated the potential cost of particular arbitrators on the list.

<u>Grievance no. 008-17 (Emanuel's loss of wages during bargaining</u>

On March 28, the Union filed a second grievance (No. 008-17) claiming that the Respondent had failed to pay Emanuel for the days he participated in contract negotiations as a member of the Union's bargaining team, which the Union alleged was inconsistent with past practice. (GC Exh. 4.)[9] The Union initially demanded arbitration on this grievance and requested a panel of arbitrators from FMCS. On April 18, FMCS provided the Union and the Respondent with a separate panel of seven arbitrators for the second grievance. As noted above, on May 19, Merchant notified Hodge that the Union had selected three arbitrators to strike from this second panel. He further offered to have the two grievances heard together with one arbitrator, to accommodate the Respondent's concern for the expenses of arbitration. (Jt. Exh. 19.. Following this correspondence, the Union determined it would not pursue the grievance regarding payment for Emanuel's time in contract negotiations, because the Union determined it was time-barred. The Respondent did not select arbitrators to strike from this second panel.

## *Analysis*

### *A. Did the Respondent unlawfully fail to continue in effect the terms of the CBA, and fail to bargain in good faith, within the meaning of Sec. 8(d), in violation of Sec. 8(a)(5) and (1)?*

The question presented is whether the Respondent violated Section 8(a)(5) and (1) within the meaning of 8(d) by refusing to follow the grievance-arbitration provision in the parties' collective-bargaining agreement when it refused to select from a list of arbitrators presented according the procedures in Article XI of the CBA, after the Union did not consent to the Respondent's proposal of a midterm modification of the CBA terms. The Respondent asserted that the modifications would be significantly less costly than the express terms of the CBA. Section 8(d) establishes that the duty to bargain includes the obligation to bargain in good faith about terms and conditions of employment. It establishes that, once executed, parties are obliged to continue to abide by the terms and conditions of an existing collective-bargaining agreement between the parties. Section 8(d) makes clear that one party may not change terms and conditions of employment set forth in a collective-bargaining agreement during the term of the contract without the consent of the other party. An employer who modifies the contract regarding mandatory subjects of bargaining without the union's consent violates Section 8(a)(5) and (1) of the Act. See *C&S Industries, Inc.*, 158 NLRB 454, 456–459 (1966); and *Mead Corp.*, 318 NLRB 201, 202 (1995). Upon a showing that an employer has modified a contract provision without the union's consent, the employer may justify the modification by demonstrating that the employer had a "sound arguable basis" for interpreting the language of the contract to permit the modification. *Bath Iron Works Corp.*, 345 NLRB 499, 501–502 (2005), affirmed, sub nom., *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14 (1st Cir. 2007). See *Hospital San Carlos Borromeo,* 355 NLRB 153 (2010) and *San Juan Bautista Medical Center,* 356 NLRB 736 (2011).

The Board distinguishes between conduct that violates the terms of a collective-bargaining agreement from conduct that reveals that a party has modified a contract provision during the term of the collective-bargaining agreement without the consent of the other party.

[9] The Union also filed an unfair labor practice charge related to this allegation, which the Union withdrew without prejudice, following an initial investigation by the Board. (R. Exh. 3.)

*Bath Iron Works*, above; see also *NCR Corp.*, 271 NLRB 1212, 1213 (1984). As a general proposition, a mere contract violation will not be found to violate Section 8(a)(5) unless it demonstrates a repudiation of the contract. However, a midterm modification of a contract provision regarding a mandatory subject of bargaining without the union's consent will violate Section 8(a)(5). A grievance-arbitration procedure is a mandatory subject of bargaining. An employer's refusal to take all, or even most, grievances to arbitration pursuant to a grievance-arbitration provision in a valid collective-bargaining agreement violates Section 8(a)(5). See *GAF Corp.*, 265 NLRB 1361, 1364–1365 (1982); *Independent Stave Company, Diversified Industries Division*, 233 NLRB 1202, 1204 (1977). The Board has found that an employer's refusal to arbitrate a single grievance or a narrow category of grievances does not necessarily violate the Act. See, e.g., *Whiting Roll Up Door Mfg. Corp.*, 257 NLRB 734, 734 fn. 2 (1981), and cases cited therein. Similarly, if an employer insists on preconditions to arbitration that are not set forth in the parties' collective-bargaining agreement, the Board will find the employer engaged in an unlawful midterm modification of the contract. See *Wire Products Manufacturing Corp*., 329 NLRB 155 (1999). When deciding whether refusals to arbitrate violate the Act, the Board considers whether the employer by its conduct has unilaterally modified contractual terms during the effective period of the contract. *Southwestern Electric*, 274 NLRB 922, 926 (1985).

First, the parties haves stipulated, and the record makes clear, that the terms of the parties' CBA were in effect during all times material to this case. More specifically, Article XI of the CBA, the grievance-arbitration procedures, was in effect when the underlying events that led to Emanuel's 2-week suspension occurred, and when the union invoked its rights under the CBA to seek arbitration of its claim that Emanuel's discipline violated the CBA.

Second, the record establishes that the Respondent refused to meet its obligations under Article XI when it insisted on the right to unilaterally determine that the monetary value of the grievance does not warrant the cost of the arbitration, and requiring under those circumstances that the Union consent to changing the language Article XI of the CBA to accommodate the Respondent's desire for a different arbitrator selection process than the one expressly provided for in the CBA. The language of the contract does not authorize the Respondent's proposed limitations on arbitration to either insist on a local arbitrator from the Virgin Islands, or to insist on holding the arbitration by video or teleconference. The terms of the CBA require that, after the Union's demand for arbitration and the request for a panel of seven arbitrators explicitly from the FMCS, "each party *shall* strike three names and the person last appearing on the list *shall* be designated as the arbitrator and his appointment *shall* be binding on both parties." (emphasis added.) Nothing in the agreed-to grievance-arbitration provision entitles the Respondent to refuse to follow this provision due to anticipated costs of the arbitration. Indeed, the grievance-arbitration provision addresses the allocation of costs between the parties, without contemplating any alternative to the affirmative requirement to select arbitrators based on costs. Nothing in the agreement permits the Respondent to refuse to arbitrate a grievance because the Union does not consent to a different method of selection of an arbitrator than the procedures set forth in the CBA. Nothing in the agreement permits the Respondent to refuse to follow the grievance-arbitration procedures because it unilaterally preferred using a local arbitrator not affiliated with FMCS or to unilaterally insist that the hearing be held by video or teleconference. The Union considered these proposed changes, and declined to consent to them.

Third, although at times in the record the Respondent suggests that the Union failed to follow the terms of the grievance-arbitration agreement, those suggestions are vague and generalized. As noted above, the Respondent failed to file a brief. I have found, without reaching the substance of the merits of the grievance, that, on its face, the grievance filed appears to state a colorable claim appropriate for arbitration under the CBA. I further find that there is sufficient evidence in the record to infer that the grievance was timely filed. This record does not establish any obvious procedural defects that would entitle the Respondent to refuse to arbitrate, and the Respondent failed to articulate any for me to consider. Moreover, the record as a whole establishes that the Respondent agreed to arbitrate, albeit only if the Union consented to terms different from those in the CBA.

Fourth, the record establishes that the Respondent refused to arbitrate *any* cases based on the Respondent's unilateral determination that the monetary value of a grievance does not warrant the cost of the arbitration, unless the Union would consent to changing the agreed-to procedures in Article XI of the CBA to accommodate the Respondent's desire for a different procedures than those expressly provided for in the CBA. Although the evidence involves only one valid grievance, the Respondent's actions and statements in the record make clear that it intends to apply the modification generally. Its unilateral determination of the value of a grievance weighed against its unilateral conjecture about anticipated cost of arbitration will determine whether the Respondent will follow the agreed-to grievance-arbitration procedure in Article XI of the CBA. Therefore, this is not a situation that would affect only a narrow category of grievance.[10] Compare: *GAF Corp.*, above (employer's refusal to arbitrate pension calculation dispute did not violate 8(a)(5), where employer did not repudiate the arbitration provision of the CBA generally and the employer sought to resolve the dispute pursuant to dispute mechanisms available in the agreed-to pension plan) and *Velan Valve Corp*., 316 NLRB 1273 (1995)(employer's refusal to arbitrate one grievance based on an interpretation that it was untimely did not violate 8(a)(5), because it reflected, at most, an intent to refuse to arbitrate the narrow class of grievance the employer believed were untimely under the CBA), with *Southwestern Electric*, above (employer's refusal to arbitrate two grievance because they were not in writing constituted unlawful midterm modification in violation of 8(a)(5), where modification would continue to impede processing of other grievances).

Thus, the Respondent's refusal to follow the arbitration provision reflects a midterm modification regarding a mandatory subject of bargaining without the Union's consent. The Respondent, at its discretion, expects to determine when an arbitration will or won't be cost-effective, and will, at its discretion, refuse to select arbitrators in the manner set forth in the CBA, if it determines that the process would be too expensive, unless the Union agrees to a modification to the CBA to accommodate the Respondent's desire to limit costs. The evidence provides no basis for

[10] I do not rely on the General Counsel's argument that the Respondent's failure to select an arbitrator from the FMCS panel in the second grievance (No. 008-17) supports a finding that the Respondent refused to arbitrate at least two grievances of different types. The Union determined that the second grievance (regarding the failure to pay Emanuel for his participation in contract negotiations) was not viable and dropped it. Therefore, I find it only marginally relevant that the Respondent failed to follow the arbitration selection process in grievance No. 008-17. As explained above, however, I agree that the Respondent did not limit its refusal to arbitrate to a specifically defined or narrow class of grievances that might excuse its conduct under Board precedent. Instead the record shows that Respondent intends to unilaterally impose this same condition on all grievances going forward.

concluding that Respondent's refusal to arbitrate according to the terms of the CBA was narrowly grounded. By placing this precondition on processing grievances to arbitration, the Respondent has repudiated the grievance-arbitration provision of the CBA.

Finally, it is immaterial how "reasonable" the Respondent's proposed changes may have been. The Union was under no obligation to agree to changes during the term of the CBA.[11] Although the Respondent presented some evidence that it believed its proposed contract modifications were reasonable, it failed to establish any sound, arguable basis to believe that the language of the CBA entitled it to insist on limiting the application of the arbitration provisions to claims that the Respondent would find financially worthy of arbitration. To the contrary, the record shows that the Respondent sought the Union's consent to change the procedures, not that it believed it was entitled under a reasonable interpretation of the terms of contract to refuse to arbitrate if the Union did not agree to changes to the procedures set forth in the CBA. The Union was simply seeking the benefit of its agreement with the Respondent. The Respondent's suggestion that it believed following the grievance-arbitration provisions would be untenable financially going forward was unsupported by the record, speculative, and inapposite to the current case. The parties rarely sought arbitration, and the Respondent did not establish that it was unable to afford the current grievance.[12] Instead, the record establishes that the Respondent did not desire to pay for this grievance and simply chose not to do so, based on its unilateral determination that the monetary value of the grievance did not warrant the cost of arbitration.

### *B. Respondent's Affirmative Defenses*

The Respondent did not file a posthearing brief in this matter. It did raise or allude to certain affirmative defenses in its answer to the complaint and referred to some at the hearing. (GC Exh. 1(i).) As explained below, I find that these defenses and arguments lack merit.

In its answer, the Respondent raises that the complaint allegation that the "Respondent has failed and refused to continue in effect terms and conditions of employment" since March 21, 2017 cannot be supported by the amended charge, which was filed March 7, 2018 and served March 8, 2018, more than 6 months after the date of the alleged violation. The Respondent's argument lacks merit. Importantly, the original charge was filed July 7, 2017, well within the statute of limitations set forth in Section 10(b) of the Act. The amended charge is almost identical to the original charge, except that it refers to only one grievance rather than two and includes a reference to Section 8(d).

[11] Moreover, the record establishes that the Union did consider the proposed changes and rejected them. It further establishes that the Union suggested combining grievances to limit costs, and explained to the Respondent that it would consider a video or teleconference hearing in a case that only involved a straight contract question, rather than the "just cause" issue in the present case, that the Union believed would necessitate the arbitrator having live witness testimony.

[12] The parties remained in negotiations for a successor collective-bargaining agreement during times material to this case, and had mutually agreed to extend the terms of the agreement. Testimony at the hearing revealed that the Respondent raised its concerns about the expenses of applying the arbitration agreement and sought changes to accommodate its concerns about costs, and the Union had not yet agreed to any changes. The parties had not reached overall agreement on a successor CBA.

Section 10(b) of the Act provides that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board." However, the timely filing of a charge tolls the 10(b) time limitation about matters subsequently alleged in an amended charge that are "similar to, and arise out of the same course of conduct, as those alleged in the timely filed charge." Amended charges filed outside the 6-month 10(b) period, "are deemed, for 10(b) purposes, to relate back to the original charge." See *Apple SoCal LLC, d/b/a Applebees*, 367 NLRB No. 44 (2018), citing *WGE Federal Credit Union*, 346 NLRB 982, 983 (2006) (quoting *Pankratz Forest Industries*, 269 NLRB 33, 36-37 (1984), enfd. mem. sub nom. *Kelly-Goodwin Hardwood Co. v. NLRB*, 762 F.2d 1018 (9th Cir. 1985)).

To determine whether an amended charge relates back to an earlier charge for 10(b) purposes, the Board applies the "closely related" test set forth in *Redd-I, Inc.*, 290 NLRB 1115, 1118 (1988). *Apple SoCal LLC*, above. The Board considers (1) whether the otherwise untimely allegations of the amended charge involve the same legal theory as the allegations in the timely charge, and (2) whether the otherwise untimely allegations arise from the same factual situation or sequence of events as the allegations in the timely charge. The Board may also consider (3) whether a respondent would raise the same or similar defenses to both the untimely and timely charge allegations. *Redd-I*, above, cited in *Apple SoCal LLC*, above. Here, the allegations in the amended charge arise from the very same facts and events as the timely filed charge, alleging that the Respondent unlawfully declined to participate in a grievance pursuant to its obligations in the CBA, in violation of Section 8(a)(5). The only new aspect of the amended charge is the addition of a legal theory involving 8(d) of the Act, which construes the 8(a)(5) violation as a midterm modification of the CBA, rather than a unilateral change. Under either theory, the section of the Act litigated is Section 8(a)(5) and the question is whether the failure to follow the grievance procedure violated the Act. Although some different defenses may be available under the two legal theories, they are not so dissimilar to have denied the Respondent adequate notice of allegations. Therefore, I find that there is no 10(b) bar to the complaint allegations based on the amended charge.

The Respondent's argument that the Union acted in bad faith is not supported by the record. As I have discussed above, the fact that the Union did not agree to the Respondent's proposed changes to the CBA does not constitute bad faith bargaining, as the Union was not obliged to consent to any changes to the express terms of the CBA during the term of the contract pursuant to Section 8(a)(d). See, e.g., *APT Medical Transportation, Inc.*, 333 NLRB 760, 764 (2001). I further find that the Respondent's insinuation that the Union engaged in bad faith—or worse—by offering to settle the grievance to avoid the cost of arbitration is not supported. The Respondent failed to present any evidence that would support a finding of unlawful pressure by the Union. The Respondent's assertion that the Union's actions were inconsistent with the standards of good faith and fair dealing pursuant to the law of the Virgin Islands has no bearing on the Board's analysis in this context. Finally, as noted above, the record fails to support the Respondent's vague assertions that the Union did not adhere to the grievance procedure.

For all the above reasons, I find that the Respondent has violated the Act as alleged in the complaint.

## CONCLUSIONS OF LAW

By failing and refusing to continue in effect the terms of the collective-bargaining agreement with the Union by refusing to arbitrate grievances unless the Union consented to modifications, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and 8(d), and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Thus, I shall order that the Respondent honor the terms of its current collective-bargaining agreement with the Union with respect to the processing of grievances and the selection of arbitrators, and, upon the Union's request, to select arbitrators for the processing of the grievance arising from the suspension of employee Emanuel (Grievance No. 049-16).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[13]

## ORDER

The Respondent, Transportation Services of St. John, Inc., St. John, United States Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the United, Industrial, Service, Transportation, Professional and Government Workers of North America, of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL–CIO (the Union) as the exclusive collective-bargaining representative of the employees in the unit described in paragraph 2(a) below, by modifying the terms of any collective-bargaining agreement entered into with the Union, without the Union's consent.

(b) Failing and refusing to process the grievance filed by the Union on December 27, 2017, concerning the suspension of Alvis Emanuel, by insisting on modifications to the grievance-arbitration procedure without the Union's consent, and failing to select an arbitrator according to the terms of the CBA, Article XI, including refusing to select an arbitrator to avoid sharing the costs of arbitration according to the CBA, without the Union's consent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) While a collective-bargaining agreement is in effect by its terms or by agreed-to extension, honor the terms of the collective-bargaining agreement with the Union, which covers employees in the following appropriate unit:

> All crewmen employed by Respondent at its place of business located in the United States Virgin Islands.

(b) Withdraw as a condition precedent to processing a grievance to arbitration that the Union consent to a change in the grievance-arbitration procedure to select a local arbitrator, to hold an arbitration by video or teleconference, or to limit the application of the grievance-arbitration procedure to those disputes that the Respondent unilaterally determines are worth the expense of arbitration.

(c) Upon request, process grievances filed by the Union in accord with the collective-bargaining agreement in effect, including by selecting arbitrators according to the CBA, Article XI and by sharing the arbitration costs as set forth in the CBA.

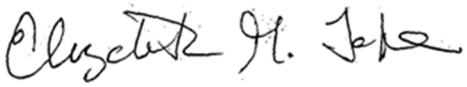
(d) Process the grievance filed by the Union on December 27, 2017, concerning the suspension of employee Alvis Emanuel, including by selecting an arbitrator pursuant to the CBA, Article XI, and by sharing the arbitration costs as set forth in the CBA.

(e) Within 14 days after service by the Region, post at its facilities in St. John, United States Virgin Islands copies of the attached notice marked "Appendix"[14] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 8, 2017.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 20, 2019



Elizabeth M. Tafe
Administrative Law Judge

**APPENDIX**

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to bargain in good faith with the United, Industrial, Service, Transportation, Professional and Government Workers of North America, of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District/NMU, AFL–CIO (the Union) as your exclusive collective-bargaining representative.

WE WILL NOT insist on midterm modifications of the agreed-to terms of a collective-bargaining agreement with any union without the union's consent.

WE WILL NOT fail or refuse to abide by the requirement to arbitrate grievances as set forth in Article XI of our collective-bargaining agreement with the Union (CBA, Art. XI), without the Union's consent, including the requirements to select an arbitrator according to the CBA and to share the arbitration costs as set forth in the CBA.

WE WILL NOT fail or refuse to process the grievance filed by the Union on December 27, 2017, concerning the suspension of Alvis Emanuel pursuant to CBA, Art. XI, without the Union's consent, including the requirements to select an arbitrator and to pay our share of the arbitration costs, as set forth in the CBA,.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, while a collective-bargaining agreement remains in effect, honor the terms of the agreement covering the terms and conditions of employment, regarding our employees in the following bargaining unit:

All crewmen employed by Respondent at its place of business located in the United States Virgin Islands.

WE WILL, upon request, process grievances filed by the Union in accord with the collective-bargaining agreement in effect, including WE WILL select arbitrators and pay our share of the arbitration costs according to the terms of the CBA, Art. XI.

WE WILL, pursuant to CBA, Article XI, process the grievance filed by the Union on December 27, 2017, concerning the suspension of employee Alvis Emanuel, including WE WILL select arbitrators and pay our share of the arbitration costs according to the terms of the CBA, Art. XI.

**TRANSPORTATION SERVICES OF ST. JOHN, INC.**

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov
South Trust Plaza, 201 East Kennedy Boulevard, Suite 300, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-202248 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.